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Attorneys for Circle City Water Company, L.L.C.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF CIRCLE CITY WATER COMPANY, LLC
FOR APPROVAL OF A HOOK-UP FEE
TARIFF.

DOCKET NO. W-03510A-05-0145

IN THE MATTER OF THE APPLICATION
OF CIRCLE CITY WATER COMPANY, LLC
FOR AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER SERVICE.

DOCKET NO. W-03510A-05-0146

RESPONSE TO STAFF REPORT

Circle City Water Company, L.L.C. ("Circle City"), an Arizona public service corporation, hereby submits its Response to the Staff Report ("Report") filed on June 28, 2005, in the above-captioned matters. Circle City is encouraged by Staff's overall recommendation to approve both Circle City's application to extend its Certificate of Convenience and Necessity ("CC&N"), as well as its Hook-Up Fee Tariff. However, of the eight (8) conditions recommended by Staff, Circle City takes specific exception to Condition No. 7, which requires Circle City to demonstrate in its next rate case that its existing customers will be "positively impacted" by the addition of new water facilities necessary to serve the new CC&N. Circle City asserts that the public interest standard has been met in this case by an affirmative showing of a public need, and Staff's analysis confirming Circle City's fitness to provide safe, reliable water utility service at a reasonable rate. See Staff Report at 2-4.

DISCUSSION

Staff has failed to articulate in its Report any statute, Commission policy or rule that requires an affirmative showing by Circle City that extending its CC&N will "positively impact" Circle City's existing ratepayers. Thus, Condition No. 7 is not supported by any factual findings, evidence or analysis in the Report. Furthermore, Staff fails to provide any benchmarks that would lead the Commission to conclude that a positive impact has occurred at the time of Circle City's next rate case. Consequently, Staff's "positive impact" standard of ratepayer benefit - as utilized in the Report - is undefined, vague and ambiguous, and would result in a great deal of uncertainty in Circle City's next rate case. In fact, Staff's own recommendation to reduce the amount of the Hook-Up Fee from \$3,000 (as proposed by Circle City) to \$1,500 - in order to achieve a more balanced capital structure for Circle City - could have the impact of raising rates in the future as debt and equity is converted into plant by the shareholder. If rates increase due to the infusion of capital, will the CC&N be revoked? What then happens to the customers? This is the dilemma that would be created by Staff's ill-conceived Condition No. 7. And, such a condition is neither necessary nor legally sound.

The issuance of a CC&N to a public service corporation in effect contracts that, if the certificate holder will make *adequate* investment and render *competent* and *adequate* service, it may have the privilege of a monopoly as against any other private utility. *Application of Trico Elec. Co-op, Inc.*, 92 Ariz. 373, 377 P.2d 309 (1962). This is especially true in the case of water utilities, where competition is not the public policy of the Commission. Once granted, a CC&N confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide *adequate* service at a reasonable rate. *James P. Paul Water Co. v. Arizona Corp. Com'n*, 137 Ariz. 426, 671 P.2d 404 (1983). Here, Circle City is providing adequate service to its existing customers pursuant to its CC&N at reasonable rates. An affirmative showing that expansion of the CC&N will "positively impact" existing customers bears no relation to Circle City's authority or ability to serve these customers. While it is true that a CC&N cannot be issued

1 by the Commission without an affirmative showing that it will serve the public interest¹, this
2 standard does not require some future "positive impact" to existing customers, but rather that it
3 can provide adequate service at reasonable rates. *Id.* Therefore, Staff's requirement that the
4 CC&N extension requested by Circle City result in a "positive impact" over and above the public
5 interest standard (adequate service at just and reasonable rates) previously is unwarranted.

6 Finally, Staff's standard would be impracticable to enforce. For instance, if Arizona
7 Public Service Company applies to extend the boundaries of its CC&N into areas of western
8 Maricopa County near the City of Avondale or the Town of Buckeye, would the company be
9 required to make an affirmative showing that such an extension will positively impact customers
10 living near Mesa or Apache Junction? If so, by what degree? Likewise, must a water company
11 with customers throughout the state make an affirmative showing of a "positive impact" to all
12 these existing customers as a condition of extending its CC&N near Flagstaff? The likely answer
13 in both instances is that neither company would be required to make such a showing. As noted,
14 the Staff Report fails to provide any Commission decision or policy as precedent for Condition
15 No. 7. Consequently, Circle City asserts that it should not be subjected to such an arbitrary and
16 capricious standard in the manner recommended by Staff.

17 CONCLUSION

18 In this case, there is a valid request for service and a demonstrated showing of public
19 need. The record indicates that Circle City is a fit and proper entity to provide such service in a
20 safe and reliable manner at just and reasonable rates. Thus, the public interest will be met.
21 Therefore, Circle City respectfully requests that the Commission grant the applications requested
22 by Circle City without Staff's recommended Condition No. 7.

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25 ¹ *Walker v. DeConcini*, 30 P.U.R.3d 447, 86 Ariz. 143, 341 P.2d 933 (1959), quoting *Pacific Greyhound Lines v. Sun*
26 *Valley Bus Lines*, 70 Ariz. 65, 216 P.2d 404, 409 (1950) ["Certificates of convenience and necessity can only be
acquired from the corporation commission by an affirmative showing that its issuance would best subserve the public
interest and not by estoppel or laches."]

1 DATED this 6th day of July, 2005.

2 FENNEMORE CRAIG, P.C.

3
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